IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.4028 OF 2004

S.P. Pande ..Petitioner

Vs.

The State of Maharashtra & Anr. ..Respondents

Mr.Prasad S. Dani for Petitioner
Mr.A.P.Vanarshe, A.G.P. for Respondents

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 28TH FEBRUARY, 2005.

P.C.

. The Petitioner was a Judicial Office whose services, subsequent to an enquiry conducted came to be terminated by an order dated 31st October, 2003. The charge-sheet served on the petitioner was in respect of an order passed in M.A.No..18 of 1992 on 1st July, 1995. The Petitioner has worked as Judicial Magistrate for about 15 years before the impugned order came to be passed.

2. The case of the petitioner is that perusal of the roznama would show, that no order was passed on 1st July, 1995 and that the matter was adjourned for orders on 28th July, 1995. It is further submitted that the order of 28th July, 1995 shows that the order was passed on that day. In these circumstances it is pointed out that the roznama

entries should be considered as true and correct and it is not the case of anybody that the roznama entries were tampered on 1st July, 1995 as no the order was pronounced in open Court on that day. It is also pointed out that considering the nature of the remand order and the past service without blemish the petitioner ought not to have been visited with the order of removal from service.

. It is also submitted that before the order of dismissal was passed no oral hearing was given to the petitioner by the Disciplinary Authority and for that purpose reliance is placed on the Judgment of full Bench of this Court in the case of **Anil Amrut Atre Vs. District and Sessions Judge, Aurangabad,2002(3) Maharashtra Law Journal, 750.**

3. In so far as the first contention is concerned the learned Counsel here is asking us as to re-appreciate the facts considering the findings of the Enquiry Officer and the evidence which was lead. The evidence on record would indicate that an application for certified copy was moved by one of the parties on 1st July, 1995 itself. An order was taken on 6th July, 1995 for issuing a certified copy. This is reflected in the findings of the Enquiry Officer. Apart from that there is other material on record which had been considered by the

Enquiry Officer in the matter of the evidence lead before him that there was overwriting on the date 28th July,1995 in the disposal book maintained by Smt. Kurkure one of the witnesses. It has also come on record that the procedure for issuing of certified copy was only after the Ministerial staff satisfied itself that the copy indeed was available. It is based on this material and the other evidence which was considered, that the Enquiry Officer came to the conclusion that the Petitioner was guilty of the charge levelled. It is not possible for us in the exercise of our extra ordinary jurisdiction under Article 226 and 227 to re-appoint the Petitioner and/or discard the said evidence even though the roznama entries would show that the order was passed on 28th July, 1995 on evidence that entry in the roznama has been rebutted.

. Learned Counsel for the Petitioner then points out that these are all acts of Ministerial Officers for which the Petitioner cannot be held responsible and as such cannot be held against him. The Enquiry Officer considering the material has drawn an inference which cannot be said to be an inference not possible of being drawn from the material on record.

5. Before dealing with the issue of punishment

we may deal with the second contention as raised on behalf of the Petitioner, that no opportunity of hearing was given to him by the Disciplinary Authority before the punishment was imposed. The contention is based on the judgment of full Bench of this Court in Anil Atre (Supra). That judgment was in respect of hearing at the Appellate stage and not before the Disciplinary Authority. Such an issue had been raised before us in the case of **Ravindra Anandrao Pawar Vs. The Government of Maharashtra in Writ Petition No.4495 of 2003**, which has been disposed by us on 1st February, 2005. Reliance then was placed on the judgment of the Apex Court in **J.A. Naiksatam Vs. Prothonotary and Senior Master, High Court of Bombay and another in Civil Appeal No.4395 of 2002 along with other appeals** which were decided on 7th October, 2004. A similar contention was raised based on Rule 8 of the Bombay High Court (Discipline and Appeal) Rules. That was negated. We noted that there is no express requirement for giving a hearing and that the principles of natural justice are satisfied, if the petitioner was given reasonable opportunity of showing cause against the findings of Enquiry Officer. That has been done. In our opinion therefore, there is no force in the contention, that contention therefore has to be rejected.

6. The last issue is whether the punishment imposed is disproportionate to the misconduct alleged and proved. We are dealing with the Judicial Officer. The charge against the Officer was that he has substituted the judgment. If the charge is proved and we have held that we have no case for interference in the finding recorded by the Enquiry Officer of the Disciplinary Officer, we do not think that the punishment imposed can be said to be disproportionate. The members of the Judiciary have to be not only above board but must be seen to be above board. We therefore find no case for interference. Petition is therefore, dismissed.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)